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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/423,619	11/15/1999	HANS SEITER		6961

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EXAMINER

MOHANDESI, JILA M

ART UNIT	PAPER NUMBER
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3728

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/423,619

Applicant(s)

SEITER, HANS

Examiner

Jila M. Mohandesi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Petition 11/22/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26 and 31-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 31 is/are allowed.
- 6) ☒ Claim(s) 26 and 32-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Oath/Declaration

1. Receipt of the declaration under 37 CFR 1.132 filed November 22, 2005 is acknowledged.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 32-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Zente (US 3,922,801). Zente discloses an inner sole of a shoe, comprising: a sole base body (11), defining a sole surface and having a forefoot joint area, a metatarsus/tarsus area, a metatarsus/heel transition area, a heel area, and a plantar arch area; a sole cover layer (10); a first cushioned layer (raised cushion layers 3, 4, 5 which is divided into individual plateau-like fields, separated but positioned next to each other in transverse direction of said sole surface) provided in said forefoot joint area; a second cushioned layer (raised cushion layer 17) provided in said metatarsus/tarsus transition area; a third cushioned layer (raised cushion layer 18) provided in said metatarsus/heel transition area; a fourth cushioned layer (plateau-oval-shaped raise cushion 9) provided in said heel area; and a fifth cushioned layer (raised sickle-shaped cushion layer 6) provided in said plantar arch area, wherein; at least said first, second and third cushioned layers define a surface which is raised with respect to said sole surface. See Figures 1-5 embodiments.

Inasmuch as applicants raised cushions positively affect a contraction of the musculature of the foot, serving thereby to aid the venous outflow of blood, the raised cushions of Zente will also inherently positively affect a contraction of the musculature of the foot, serving thereby to aid the venous outflow of blood.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zente. Zente as described above discloses all the limitations of the claims except for the second and third cushion layers also being divided into individual plateau-like fields, separated but positioned next to each other in transverse direction of said sole surface. Zente discloses the first cushion layer (3, 4, 5) which is divided into individual plateau-like fields, separated but positioned next to each other in transverse direction of said sole surface to allow the other areas of the foot to benefit from the differing hardness/resiliency of the fields. Therefore, it would have been obvious to one of

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ordinary skill in the art at the time the invention was made to also make the second and third cushion layers such that they are each divided into individual plateau-like fields, separated but positioned next to each other in transverse direction of said sole surface as taught by the first cushion layer in Zente to allow the other areas of the foot to benefit from the differing hardness/resiliency of the fields.

Allowable Subject Matter

7. Claim 31 is allowed.

Response to Arguments

8. Applicant's arguments with respect to claims 26 and 32-35 has been considered but is moot in view of the new ground(s) of rejection.

Any future amendments should comply with the requirements of 37 CFR 1.121 or 1.4.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are insoles analogous to applicant's instant invention.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jila M. Mohandesi whose telephone number is (571) 272-4558.

The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jila M Mohandesi
Primary Examiner
Art Unit 3728

JMM
March 12, 2007